



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201002052

OCT 19 2009

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

Legend:

Taxpayer =

IRA A =

Financial Institution B =

Plan C =

Financial Institution D =

Plan E =

Financial Institution F =

Account G =

Financial Institution H =

Division I =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Amount 5 =

Dear :

This letter is in response to a request for a letter ruling dated December 17, 2007, as modified and supplemented by facsimiles dated January 17, 2008, and September 14, 2009, from your authorized representative, in which you have applied for a waiver of the 60-day rollover requirement contained in sections 408(d)(3)(I) and 402(c)(3)(B) of the Internal Revenue Code ("Code"), regarding the distributions of Amounts 1 and 2 from IRA A, maintained with Financial Institution B, and Amount 3 from Plan C and Amount 4 from Plan E, maintained with Financial Institutions D and F, respectively.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer, age 62 at the time of the distribution of Amounts 1 and 2 from IRA A, and Amount 3 from Plan C and Amount 4 from Plan E, asserts that his failure to accomplish a rollover within the 60-day period prescribed by Code sections 408(d)(3) and 402(c)(3) was due to the erroneous actions by an employee of Financial Institution H. Amounts 1, 2, 3 and 4 were transferred directly into Account G, a non-IRA account. Amounts 1, 2, 3 and 4 remain in Account G and have not been used for any purpose.

Taxpayer maintained IRA A, an individual retirement account under section 408(a) of the Code. In addition, Taxpayer is a participant in Plans C and E, profit-sharing/cash or deferred arrangements under section 401(k) of the Code. Taxpayer represents that in late 2004, he decided to consolidate these three retirement plans into one IRA sponsored by Financial Institution H. Taxpayer was advised by an employee of Financial Institution H that to complete consolidation of his retirement accounts, he needed to contact Division I of Financial Institution H and request that the funds be transferred or sent to Financial Institution H where the funds would be held by Account G.

Taxpayer met with an employee of Division I and stated he wanted to open an IRA into which he would transfer funds from IRA A and Plans C and E. In response to Taxpayer's desire to open the IRA, the employee of Division I prepared an application form (subscription agreement and investment questionnaire) for Taxpayer's signature. The form was completed by the Division I employee. The completed application was presented to Taxpayer for signature.

By letter dated October 24, 2004, Taxpayer requested that Financial Institution B wire transfer Amount 1 from IRA A to Account G. The transfer occurred on November 30, 2004. In addition, in March of 2005, Taxpayer requested that Financial Institution B wire transfer Amount 2 from IRA A to Account G. This transfer occurred on March 31, 2005. Neither Financial Institution B nor the custodian for IRA A issued a Form 1099-R.

In early 2006, Taxpayer requested that Financial Institution D transfer Amount 3 from Plan C to Account G. The transfer occurred in February, 2006. Taxpayer, Financial Institution H and the custodian for Plan C treated the distribution of Amount 3 as a transfer of qualified retirement funds to an IRA. The custodian for Plan C issued a Form 1099-R showing a taxable distribution of zero. Lastly, on March 6, 2006, Taxpayer informed Financial Institution H he wished to transfer Amount 4 from Plan E to Account G. The custodian for Plan E prepared a check dated March 14, 2006, totaling Amount 4, which was sent to Financial Institution H and deposited into Account G. Taxpayer, Financial Institution H and the custodian for Plan E treated the distribution of Amount 4 as a transfer of qualified retirement funds to an IRA. The custodian for Plan E issued a Form 1099-R showing a taxable distribution of zero.

By e-mail message dated March 22, 2006, in response to an inquiry by Taxpayer, the same employee who had assisted Taxpayer with the four transfers from his retirement plans to Account G, assured Taxpayer that Account G was an IRA. Taxpayer treated all four of the distributions from IRA A and Plans C and E as eligible rollover distributions not subject to income taxation. In March of 2007, Taxpayer informed Financial Institution H of a desire to make additional transfers of qualified retirement funds into Account G. Financial Institution H informed Taxpayer that custodian to custodian transfers may only be made through a custodian. At this time, Taxpayer became aware that Account G was not an IRA and was set up as an individual account. Taxpayer never intended to remove Amounts 1, 2, 3, or 4 from a tax qualified retirement plan or an IRA. Financial Institution H has acknowledged its employee erred when he failed to advise Taxpayer of the necessity of investing funds through a custodian.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive: 1) the 60-day rollover requirement contained in section 408(d)(3)(I) of the Code with respect to the distribution of Amounts 1 and 2; and, 2) the 60 day rollover requirement contained in section 402(c)(3)(B) of the Code with respect to the distribution of Amounts 3 and 4.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Code.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) of the Code provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 408(d)(3)(I) and 402(c)(3)(B) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer is consistent with his assertion that his failure to accomplish a timely rollover of Amounts 1, 3 and 4 (Amount 5) was caused by erroneous actions of an employee of Financial Institution H. Such actions constituted an error by a financial institution.

Therefore, pursuant to sections 408(d)(3)(I) and 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA A and Amount 3 from Plan C and Amount 4 from Plan E and Taxpayer is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 5 into a rollover IRA. Provided all other requirements of sections 408(d)(3) and 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount 5 will be considered a rollover contribution within the meaning of sections 408(d)(3) and 402(c)(3) of the Code, respectively.

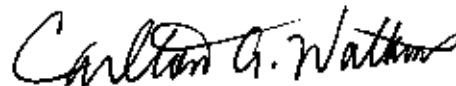
Amount 2 was distributed from IRA A approximately 4 1/2 months after the distribution of Amount 1. Due to the application of sections 408(d)(3)(A)(i) and 408(d)(3)(B) of the Code to Amount 1, Amount 2 may not be rolled over to an eligible retirement plan.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact (I.D. #), at () - .

Sincerely yours,



Manager
Employee Plans Technical Group 1

cc:

Enclosures:

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Notice of Intention to Disclose, Notice 437